

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

ULIOS BROOKS,	:	
	:	NO. 1:09-CV-00922
Plaintiff,	:	
	:	
	:	
v.	:	<b>OPINION AND ORDER</b>
	:	
HOMER YATES, et al.,	:	
	:	
Defendants.	:	

This matter is before the Court on the Magistrate Judge's Report and Recommendation and Order, (doc. 93), to which no objections were filed. In her Report and Recommendation, the Magistrate Judge recommends that Plaintiff's motions for summary judgment (doc. 71) and for default judgment (doc. 83) be denied. For the reasons indicated herein, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation in its entirety.

Plaintiff is an inmate at the Southern Ohio Correctional Facility and has filed a civil rights action against Defendants, alleging excessive use of force, negligence and retaliation. The discovery deadline in this matter is currently August 11, 2011, with dispositive motions due on September 11, 2011. Plaintiff submitted a motion for summary judgment with certain attachments he contends prove his case. The Magistrate Judge determined that the attached exhibits not only do not prove Plaintiff's case but actually cut against it. Having found that Plaintiff had not shown

that no genuine issue of fact exists with respect to his claims, the Magistrate Judge recommends that Plaintiff's motion for summary judgment be denied.

Plaintiff's motion for default judgment is predicated on his assertion that Defendants failed to timely respond to his motion for summary judgment. The Magistrate Judge noted, however, that Defendants have until September 11, 2011 to respond to the motion, so their response is not untimely. In addition, the Magistrate Judge observed that default judgment is typically a remedy for failure to answer a complaint, and Defendants have indeed answered Plaintiff's complaint. Consequently, the Magistrate Judge recommends that Plaintiff's motion for default judgment be denied.

The parties were served with the Magistrate Judge's Report and Recommendation and were therefore afforded proper notice of the Magistrate Judge's Report and Recommendation as required by 28 U.S.C. § 636(b)(1)(C), including the notice that failure to file timely objections to the Report and Recommendation would result in a waiver of further appeal. See United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Neither Party filed any objections thereto within the time frame provided for by Fed. R. Civ. P. 72(b) and 28 U.S.C. § 636(b)(1)(C). When no objections have been filed, the Court need only satisfy itself that there is no clear error on the face of the record in order to accept the Magistrate Judge's

recommendation. See Advisory Committee Notes to Fed. R. Civ. P. 72; Thomas v. Arn, 474 U.S. 140, 150(1985)("It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings").

Having reviewed this matter pursuant to 28 U.S.C. §636(b), the Court finds no clear error on the face of the record and further finds the Magistrate Judge's Report and Recommendation well-reasoned, thorough, and correct. Accordingly, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation in its entirety (doc. 93) and therefore DENIES Plaintiff's motion for summary judgment (doc. 71) and his motion for default judgment (doc. 83).

SO ORDERED.

Dated: July 21, 2011

s/S. Arthur Spiegel  
S. Arthur Spiegel  
United States Senior District Judge